

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In Re:) BK# 14-30017
) CHAPTER 13
DANIEL THOMAS GARGAN,)
SSN/ITIN: xxx xx 7145) UNITED STATES' OBJECTIONS
) TO THE CONFIRMATION OF
AND) CHAPTER 13 PLAN
) DATED MAY 23, 2014
MARY TURGEON WYNNE,)
SSN/ITIN: xxx xx 8329,)
)
Debtors.)

COMES NOW the United States of America, by and through the Internal Revenue Service (IRS) and its undersigned counsel, and having considered the interests and claims of the United States as filed and presented herein against the Debtors, Daniel Thomas Gargan and Mary Turgeon Wynne, hereby objects to the Chapter 13 Plan of Reorganization proposed by the above-named Debtors on the following grounds:

1. On behalf of the United States, the IRS filed a Proof of Claim dated May 29, 2014. The claim shows a secured claim in the amount of \$14,860.58, and an unsecured priority claims in the amount of \$12,899.87. These amounts have been estimated, in part, because the Debtors have not filed income tax returns for the years 2011 and 2013.
2. The proposed plan should not be confirmed since it is impossible to determine until the Debtors file their prepetition returns whether the Plan

satisfies 11 U.S.C. § 1322(a)(2) with respect to the priority claims of the United States. No Plan should be confirmed until the Debtors' 2011 and 2013 income tax returns have been filed. Until the returns are filed, the IRS is unable to determine whether the Plan is feasible under 11 U.S.C. § 1325(a)(6). Liabilities for unfiled returns are not discharged under § 523(a)(1)(B).

3. Once the unfiled returns have been filed, the IRS should be given sufficient time to evaluate the returns to determine whether the Government's Proof of Claim should be amended. To expedite the process, the completed and executed returns should be faxed to Zubaidan F. Needham, IRS Bankruptcy Specialist, at (313) 628-3602.

4. The Plan also fails to provide for payment of the IRS's secured claim in the amount of \$14,860.58, at the current quarterly short-term interest rate of 3% as required by 11 U.S.C. § 1325(a)(5) and 26 U.S.C. § 6612. In re Hathaway Coffee House, Inc., 24 B.R. 534 (Bankr. S.D. Ohio 1982); see In re Beck, 128 B.R. 571 (Bankr. E.D. Okla. 1991). To pay the secured claim over 60 months requires monthly payments of \$1,050. Debtor's Plan also needs to provide that the IRS retains its lien until the secured claim, plus interest on that secured claim, is paid in full and Debtor's discharge is entered. The exemptions to secured debt owing on IRS tax lien do not apply. 11 U.S.C. § 522(c)(2)(B).

5. The United States also objects as Debtors' Plan does not provide for filing of post-petition federal tax returns and payment of post-petition federal

taxes. Debtor should not be allowed to take advantage of the equitable bankruptcy provisions of the United States Code while steadfastly ignoring the federal tax provisions of the same United States Code.

6. The United States, on behalf of the IRS, objects to the Plan in that it does not provide for the IRS's right to set off, pursuant to 11 U.S.C. § 553 and applicable statutes and regulations. 26 U.S.C. § 6402.

WHEREFORE, the United States respectfully requests that this Court determine and rule as follows:

- A. The objections of the United States are sustained and confirmation of the proposed plan is denied;
- B. The Debtors shall complete, execute, and file their prepetition income tax returns for the years 2011 and 2013;
- C. That, if appropriate, the IRS shall amend the Government's Proof of Claim after completing its review of the Debtors' returns;
- D. That no Plan shall be submitted until the IRS has completed its review of the Debtors' tax returns;
- E. That any Plan shall provide for full payment of the determined secured and priority claims reflected on the Government's Proof of Claim;
- F. That the case be dismissed, pursuant to 11 U.S.C. § 1307(c); and

G. That the United States be granted such other relief as the Court deems proper.

Dated this 6th day of June, 2014.

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